

Information Commissioner's Office

Call for evidence:

Age Appropriate Design Code

Start date: 27 June 2018

End date: 19 September 2018

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Information Commissioner's Office

Introduction

The Information Commissioner (the Commissioner) is calling for evidence and views on the Age Appropriate Design Code (the Code).

The Code is a requirement of the Data Protection Act 2018 (the Act). The Act supports and supplements the implementation of the EU General Data Protection Regulation (the GDPR).

The Code will provide guidance on the design standards that the Commissioner will expect providers of online 'Information Society Services' (ISS), which process personal data and are likely to be accessed by children, to meet. Once it has been published, the Commissioner will be required to take account of any provisions of the Code she considers to be relevant when exercising her regulatory functions. The courts and tribunals will also be required to take account of any provisions they consider to be relevant in proceedings brought before them. The Code may be submitted as evidence in court proceedings.

Further guidance on how the GDPR applies to children's personal data can be found in our guidance [Children and the GDPR](#). It will be useful to read this before responding to the call for evidence, to understand what is already required by the GDPR and what the ICO currently recommends as best practice. In drafting the Code the ICO may consider suggestions that reinforce the specific requirements of the GDPR, or its overarching requirement that children merit special protection, but will disregard any suggestions that fall below this standard.

The Commissioner will be responsible for drafting the Code. The Act provides that the Commissioner must consult with relevant stakeholders when preparing the Code, and submit it to the Secretary of State for Parliamentary approval within 18 months of 25 May 2018. She will publish the Code once it has been approved by Parliament.

This call for evidence is the first stage of the consultation process. The Commissioner seeks evidence and views on the development stages of childhood and age-appropriate design standards for ISS. The Commissioner is particularly interested in evidence based submissions provided by: bodies representing the views of children or parents; child development experts; providers of online services likely to be accessed by children, and trade associations representing such providers. She appreciates that different stakeholders will have different and particular areas of expertise. The Commissioner welcomes responses that are limited to specific areas of interest or expertise and only address questions within these areas, as well as those that address every question

asked. She is not seeking submissions from individual children or parents in this call for evidence as she intends to engage with these stakeholder groups via other dedicated and specifically tailored means.

The Commissioner will use the evidence gathered to inform further work in developing the content of the Code.

The scope of the Code

The Act affords the Commissioner discretion to set such standards of age appropriate design as she considers to be desirable, having regard to the best interests of children, and to provide such guidance as she considers appropriate.

In exercising this discretion the Act requires the Commissioner to have regard to the fact that children have different needs at different ages, and to the United Kingdom's obligations under the United Nations Convention on the Rights of the Child.

During Parliamentary debate the Government committed to supporting the Commissioner in her development of the Code by providing her with a list of 'minimum standards to be taken into account when designing it.' The Commissioner will have regard to this list both in this call for evidence, and when exercising her discretion to develop such standards as she considers to be desirable

In developing the Code the Commissioner will also take into account that the scope and purpose of the Act, and her role in this respect, is limited to making provision for the processing of personal data.

Responses to this call for evidence must be submitted by 19 September 2018. You can submit your response in one of the following ways:

Online

Download this document and email to:

childrenandtheGDPR@ICO.org.uk

Print off this document and post to:

Age Appropriate Design Code call for evidence
Engagement Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow

Cheshire SK9 5AF

If you would like further information on the call for evidence please telephone 0303 123 1113 and ask to speak to the Engagement Department about the Age Appropriate Design Code or email childrenandtheGDPR@ICO.org.uk

Privacy statement

For this call for evidence we will publish responses received from organisations but will remove any personal data before publication. We will not publish responses from individuals. For more information about what we do with personal data please see our [privacy notice](#).

Section 1: Your views and evidence

Please provide us with your views and evidence in the following areas:

Development needs of children at different ages

The Act requires the Commissioner to take account of the development needs of children at different ages when drafting the Code.

The Commissioner proposes to use their age ranges set out in the report Digital Childhood – addressing childhood development milestones in the Digital Environment as a starting point in this respect. This report draws upon a number of sources including findings of the United Kingdom Council for Child Internet Safety (UKCCIS) Evidence Group in its literature review of Children’s online activities risks and safety.

The proposed age ranges are as follows:

3-5

6-9

10-12

13-15

16-17

Q1. In terms of setting design standards for the processing of children’s personal data by providers of ISS (online services), how appropriate you consider the above age brackets would be (delete as appropriate):

Not at all appropriate

Not really appropriate

Quite appropriate

Very appropriate

Q1A. Please provide any views or evidence on how appropriate you consider the above age brackets would be in setting design standards for the processing of children’s personal data by providers of ISS (online services),

Sky’s response to this consultation is based on our experience building online services and apps specifically designed for children.

The Sky Kids App was designed with 5Rights principles in mind. It allows parents to set up the app with reference to specific age ranges that then corresponds to particular content that is suitable for the child using the app. It is highly configurable

by parents, for example, parents can select an option that means only channels suitable for under-5s can be watched on the app and the child's date of birth means that age appropriate content will be presented for them to watch.

The app was designed with the principle that children cannot be treated as a homogenous group and have different content preferences and developmental needs depending on their age.

There are specific features in the app that allow parents control over their children's use of the Sky Kids service such as sleep mode, which sets time limits on when the app can be used and a camera function which controls whether games can use the camera on the device.

The app was designed by children, who had direct input into the development process through detailed focus groups and workshops.

Q2. Please provide any views or evidence you have on children's development needs, in an online context in each or any of the above age brackets.

Sky supports the principles set out in the 5Rights response to this consultation on the different developmental needs of children

In the design of our services specifically for children we took care to accommodate children's differences, both from adults and from each other. Simply putting a new skin over our existing design was not sufficient to take account of children's needs.

For example in the sign-up process of the Sky Kids app we thought carefully about when to give the child control in configuring and when to ask them to ask their parents to make specific selections based on their age range.

Other organisations have done extensive media literacy analysis of the different developmental needs of children. For example, Ofcom's annual child media literacy audit is a useful starting point in understanding different behaviours. Internet Matters and the 5Rights foundation have both researched different children's needs and have provided responses to this consultation that we endorse.

The United Nations Convention on the Rights of the Child

The Data Protection Act 2018 requires the Commissioner to take account of the UK's obligations under the UN Convention on the Rights of the Child when drafting the Code.

Q3. Please provide any views or evidence you have on how the Convention might apply in the context of setting design standards for the

processing of children's personal data by providers of ISS (online services)

It seems logical to apply the Convention in the setting of design standards. We support the 5Rights Foundation response to this consultation that welcomes the inclusion of the UNRC within the code, particularly the clarification that a child is any person under 18 and that 'the best interests of the child is the paramount consideration in relation to data protection'. We also support their analysis on how to apply the code.

Aspects of design

The Government has provided the Commissioner with a list of areas which it proposes she should take into account when drafting the Code.

These are as follows:

- default privacy settings,
- data minimisation standards,
- the presentation and language of terms and conditions and privacy notices,
- uses of geolocation technology,
- automated and semi-automated profiling,
- transparency of paid-for activity such as product placement and marketing,
- the sharing and resale of data,
- the strategies used to encourage extended user engagement,
- user reporting and resolution processes and systems,
- the ability to understand and activate a child's right to erasure, rectification and restriction,
- the ability to access advice from independent, specialist advocates on all data rights, and
- any other aspect of design that the commissioner considers relevant.

Q4. Please provide any views or evidence you think the Commissioner should take into account when explaining the meaning and coverage of these terms in the code.

Q5. Please provide any views or evidence you have on the following:

Q5A. about the opportunities and challenges you think might arise in setting design standards for the processing of children's personal data by providers of ISS (online services), in each or any of the above areas.

Sky supports the inclusion of all of these areas of design in the code. We are also supportive of the 10 Guiding Principles developed by 5Rights in consultation with a large number of individuals and organisations across its network.

Where applicable Sky incorporated these areas into the design process of the Sky Kids app. Our key principles in designing the app was that it should be fun, surprising and engaging for children, while also being safe, giving them ownership and being forgiving of their relative lack of understanding of the 'rules of the road' for digital technology. The children we consulted in designing the app told us they wanted less complexity, and wanted the "fiddliness" taken out of the app.

On the 'strategies to ensure extended user engagement' we would draw a distinction between addiction-forming design and habit-forming design. We want to design our products to be engaging and fun for children, while allowing them to switch away or turn off when they need to. For example, we decided not to include video autoplay as a function in the Sky Kids app. We asked children what they wanted as part of the app and they told us they didn't want it. They wanted to feel empowered to choose what they want to watch and not to be automatically shown content they might not have chosen.

There are significant opportunities for online services to protect children from harms online. While Sky's examples do not relate to the processing of children's data as part of an online service, our experience is that involving children in the design process, stripping out complexity and building in safety by default means a safer and better product.

Q5B. about how the ICO, working with relevant stakeholders, might use the opportunities presented and positively address any challenges you have identified.

Sky would suggest engaging with online services at various points in their design process to understand how they think about how children will use their services under development. Different organisations will have different approaches, but we suggest the ICO encourages children specific design at an early stage instead of retrofitting design features onto a pre-existing product.

Collaboration with groups such as the 5Rights Foundation and Internet Matters should be positively encouraged.

Q5C. about what design standards might be appropriate (ie where the bar should be set) in each or any of the above areas and for each or any of the proposed age brackets.

On the specific design standards identified we would suggest that any protective features such as privacy settings should be turned on by default. The standard should be 'safety by default', therefore any features such as geolocation should be turned off, and

made configurable to either the parent if the child is young, or the child if the child is in the oldest age bracket.

Sky has followed this principle with its broadband parental control tool. This principle was supported by the Lords Communications Committee Growing up with The Internet report.

All advertising and marketing within the product should be made clear and transparent, with the ICO retaining the ability to independently audit what an online service actually displayed to children.

Parents must be incorporated into the processes for children to report and resolve any disputes. A child should also have absolute right to remove any content or profile information that relates to them at any time without justification.

Q5D. examples of ISS design you consider to be good practice.

See descriptions above

Q5E. about any additional areas, not included in the list above that you think should be the subject of a design standard.

We would suggest more needs to be done on the actual content presented to children as part of these services. Safety must be built in by design and children often see content that is unsuitable and harmful for them. We recognise this is beyond the remit of this code, but the ICO should share its learnings with the Government as part of the internet safety strategy, forming a model for future regulatory structures on safety.

Q6. If you would be interested in contributing to future solutions focussed work in developing the content of the code please provide the following information. The Commissioner is particularly interested in hearing from bodies representing the views of children or parents, child development experts and trade associations representing providers of online services likely to be accessed by children, in this respect.

Name: [REDACTED]

Email: [REDACTED]@sky.uk

Further views and evidence

Q7. Please provide any other views or evidence you have that you consider to be relevant to this call for evidence.

Sky supports the 5Rights response to this consultation and agrees that the following 10 Guiding Principles should form the basis of the code:

1. In determining standards and what measures must be taken, the best interests of the child must be the paramount consideration
2. A high bar of privacy by default; i.e. safety by design, privacy by design and high privacy by default should be the norm for all products and services' features and functionalities likely to be accessed by children
3. Responsibility for data protection rests with online services, not the child
4. Responsibility for enforcement rests with the regulator, not the child
5. The impact of service design on children (under 18) must be considered in advance
6. The Code must reflect and/or enhance, never lessen, existing regulations, legislation, international agreements and cultural norms that protect children in other contexts, by incorporating and applying them so that they are enforceable in the digital environment
7. The Code must give clarity to the General Data Protection Regulation's ("GDPR") assertion that "children merit specific protection"
8. The Code must reflect and address the needs and concerns articulated by children themselves
9. That children have different needs at different ages and stages of development and these must be considered when designing services
10. Online services have a duty to uphold the spirit as well as the letter of the Code

Section 2: About you

Are you:

A body representing the views or interests of children? Please specify:	<input type="checkbox"/>
A body representing the views or interests of parents? Please specify:	<input type="checkbox"/>
A child development expert? Please specify:	<input type="checkbox"/>
A provider of ISS likely to be accessed by children? Please specify: Broadcaster and telecoms provider	<input checked="" type="checkbox"/>
A trade association representing ISS providers? Please specify:	<input type="checkbox"/>
An ICO employee?	<input type="checkbox"/>
Other? Please specify:	<input type="checkbox"/>

**Thank you for responding to this call for evidence.
We value your input.**

